

erman, 11 G. & J. 185.⁷ These costs are, it is said, to be allowed as between attorney and client, and reasonable counsel fees⁸ are allowed under

⁷ Whenever trustees or executors have reasonable grounds to invoke a judicial construction of wills or other instruments under which they act, costs are allowed out of the funds in their hands. *Patterson v. Wilson*, 64 Md. 193; *Buchanan v. Lloyd*, 64 Md. 306; *Littig v. Hance*, 81 Md. 416, 434; *Frostburg Asso. v. Brace*, 51 Md. 508; *Preston v. Willett*, 105 Md. 388; *Matthews v. Targarona*, 104 Md. 442.

When it is proper that the court should be asked to decide whether certain taxes are entitled to priority of payment out of funds in the hands of a trustee for the benefit of creditors, the costs will be ordered paid out of such funds, although it may be held that the taxes are not entitled to priority. *Parlett v. Dugan*, 85 Md. 407.

A trustee should not be made to pay the costs incident to successfully establishing a claim by him against his trust estate. *Devries v. Hiss*, 72 Md. 560.

A receiver appointed for a firm is entitled to an allowance for an accountant whose services are necessary for the adjustment of the partnership affairs. *Matthews v. Adams*, 84 Md. 143.

Costs and counsel fees when sale set aside.—Where a sale made by a trustee is set aside by the court the expenses of that sale and the costs incident thereto will be allowed out of the proceeds of a re-sale. *Griffith v. Dale*, 109 Md. 697; *Real Estate Co. v. Union Trust Co.*, 102 Md. 41; *South Balto. Co. v. Kirby*, 89 Md. 52; *Patterson v. Miller*, 52 Md. 388. See also *Gordon v. Matthews*, 30 Md. 235; *Mealy v. Page*, 41 Md. 172.

But where a sale under a mortgage is set aside on exceptions filed thereto, the trustee is not entitled to an allowance out of the proceeds of a re-sale for counsel fees paid an attorney for opposing the exceptions, or for a fee paid a witness who testifies as a real estate expert in reference thereto. *Griffith v. Dale*, 109 Md. 697; *Mahoney v. Mackubin*, 54 Md. 268. Nor can such an allowance of counsel fees be made even where the sale is confirmed. *Shaw v. Smith*, 107 Md. 523.

⁸ **Counsel fees.**—"The general principle is that where a trustee employs an attorney to render necessary services for the benefit of all the parties interested in the estate, or seeks advice for the proper administration of his trust, a reasonable fee, though not specially provided for in the decree, is to be allowed for such services out of the common fund in his possession." *Griffith v. Dale*, 109 Md. 700.

When the trustee appointed in an equity case to sell property is also an attorney and renders legal services in connection with the trust estate which enure to the benefit of all parties interested, he will as a general rule be entitled to be paid for them out of the common fund. *Title Co. v. Burdette*, 104 Md. 666; *National Bank v. Dulaney*, 96 Md. 159; *Hamilton v. Trundle*, 100 Md. 276; *Lyon v. Hires*, 91 Md. 411; *Baker v. Hedrich*, 85 Md. 645; *B. & O. R. R. Co. v. Brown*, 79 Md. 447; *Davis v. Gemmel*, 73 Md. 530; *Warburton v. Robinson*, 113 Md. 28.

Where a bill is filed for the sale for partition of land descended to in-